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Jason A. Nagi
Principal
212.380.4108
jason.nagi@offitkurman.com

January 19, 2022

By ECF

Honorable Lisa G. Beckerman
United States Bankruptcy Judge
United States Bankruptcy Court
Southern District of New York
One Bowling Green
New York, NY 10004-1408

Re: *In re 286 Rider Ave Acquisition LLC*, 21- 11298 (LGB)

Dear Judge Beckerman:

This firm is counsel to 286 Rider Ave Development LLC ("**Development**"), Toby Moskovits and Michael Lichtenstein in the above-referenced bankruptcy case. We write to request the Court's assistance in compliance with the scheduling order entered on January 12, 2022 (the "**Scheduling Order**") [Dkt # 259] and to (1) direct Lender (defined below) to provide an accounting of the application of the tendered \$11,918,974.12 (the "**Payment Amount**"), including any DIP advances, the amount and date of each advance and evidence of same, by January 24, 2022; and (2) direct Debtor to provide information by January 24, 2022 about the status of payment of any fees to Mr. Buchwald and any estimated fees for Mr. Buchwald and Debtor's counsel to close out the case (items nos. 1 and 2 collectively hereafter, the "**Information**"), and an opportunity for Development to object to the Debtor's estimates and Lender's accounting and a date by which this Court would issue a ruling on any disputed estimates which Development might contend are unreasonable and/or excessive. Unfortunately, the Lender and Debtor have failed to cooperate with providing the Information which is essential to Development's compliance with the Scheduling Order, as more fully set forth below.

As the Court may recall, on January 11, 2022, Development tendered the Payment Amount in full payment of the \$8 million loan made by Be-Aviv Lender LLC ("**Lender**") to 286 Rider Ave Acquisition LLC ("**Debtor**") and in full payment of the Debtor-in-Possession Financing previously approved by this Court [Dkt #175]. Among other things, the Scheduling Order requires Development to "file a supplement to the Payoff Motion by January 26, 2022" [Dkt #259.]

In accordance with the Scheduling Order, on January 13, 2022, Development emailed Lender's counsel, Mr. Joseph Moldovan, Esq., and requested "a detailed accounting of the application of the tendered Payment Amount, including any DIP advances, the amount of each



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advance and evidence of each advance, by next Wednesday, January 19, 2022.” Despite the very obvious reasons for Development’s request—need of evidence of the amounts of funds actually paid by Lender under the DIP Financing in order for Development to comply with the Court’s direction that unfunded administrative expenses be escrowed by February 8, 2022, Mr. Moldovan responded: “Why?” By email dated January 14, 2022, I explained that “[w]e need to confirm that the money in our tender went to things it was supposed to go to, we need to know how much of the DIP was used and evidence that the moneys were actually spent as part of the accounting needed in connection with the court’s scheduling order.” (A copy of the email chain with Mr. Moldovan is attached hereto as **Exhibit A.**)

By separate email, dated January 17, 2022, in an attempt to address this Court’s concerns regarding accruing fees in pending state court actions, I provided stipulations signed by Development’s state court counsel, dismissing all three state court actions against Lender, without prejudice, asking for a response by Noon today. (A copy of the email, with attachments, is attached hereto as **Exhibit B.**) We have received no response at all. This Court should be aware that the Florida action which was the subject of a prior Motion before this Court has been withdrawn.

Furthermore, I sent an email dated January 14, 2022, to counsel for the Debtor, Fred Ringel, Esq., requesting on behalf of Development “an accounting of all of Debtor’s unpaid legal fees through today, by next Wednesday, January 19, 2022.” Mr. Ringel responded that it was not possible to give his fees stating “I did not see any provision in the scheduling order that contained a deadline of January 19th to provide an accounting as of today’s date. Moreover, the pending appeals filed by Developments [sic] make it impossible to give a number since legal fees and expenses continue to accrue.” By email dated January 14, 2022, I responded as follows:

We see no reason why you cannot get us the raw information about your past billing by next Wednesday. This is required in order for us to do an accounting of the correct payoff amounts and for us to receive the return of any excess payment we made.

Is there a particular reason you cannot provide us this basic information by next Wednesday? I would rather avoid having to raise this with the court.

(A copy of the email chain with Mr. Ringel is attached hereto as **Exhibit C.**)

It is disingenuous for Mr. Ringel to contend he is incapable of providing his estimated fees to close out this case. This case is effectively over now that Lender has been paid in full—Lender’s attempt to refuse to acknowledge payment because it wants a release is both legally unsupportable and no longer relevant now that Development has provided stipulations discontinuing the existing actions as against Lender, without prejudice. Significantly, all of the estate’s creditors have, or will shortly, enter into formal agreements to have their claims paid outside of the bankruptcy case by Development. Mr. Ringel should not be permitted to make it impossible for Development to



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comply with the Scheduling Order.

Unfortunately, as no responses regarding the needed accounting and estimates have been forthcoming from either Mr. Moldovan or Mr. Ringel, Development requires this Court's intervention to obtain the Information needed from Lender and Debtor to comply with the Scheduling Order and its escrow provision. Consequently, Development requests that the Court enter a further order, directing Debtor and Lender to provide the Information.

We thank the Court for its attention to this matter.

Sincerely,

/s/ Jason A. Nagi

Jason A. Nagi

cc: All Counsel (by ECF)

Encls.

4890-6590-7210

Exhibit A

Nagi, Jason

From: Nagi, Jason
Sent: Friday, January 14, 2022 4:05 PM
To: Moldovan, Joseph T.
Cc: Kuhns, Joyce; Spelfogel, Douglas
Subject: Re: 286 Rider Ave Payoff

Joe- our client sent your client \$12 million and paid off the loan.

We need to confirm that the money in our tender went to things it was supposed to go to, we need to know how much of the DIP was used and evidence that the moneys were actually spent as part of the accounting needed in connection with the court's scheduling order.

Generally speaking, we are entitled to this under the UCC.

You can either cooperate with us, or we will have to involve the court. Any such further legal action will of course not be covered by the Debtor and is not the responsibility of the Debtor as the lender has been paid off.

Jason A. Nagi

Chair - Distressed Real Estate
Head of FinTech
D 212.380.4108
M 646.251.3259
Jason.Nagi@offitkurman.com

Offit | Kurman®
Attorneys At Law

590 Madison Ave
6th Floor
New York, NY 10022
T 212.545.1900
F 212.545.1656
offitkurman.com



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From: Moldovan, Joseph T. <jmoldovan@morrisoncohen.com>
Sent: Thursday, January 13, 2022 11:59:52 PM
To: Nagi, Jason <Jason.Nagi@offitkurman.com>
Cc: Kuhns, Joyce <jkuhns@offitkurman.com>; Spelfogel, Douglas <DSpelfogel@mayerbrown.com>
Subject: Re: 286 Rider Ave Payoff

Why?

Joe

Joseph T. Moldovan

Chair, Business Solutions, Restructuring & Governance Practice

Mediator, Complex Disputes

T: 212.735.8603 | C: 917.693.9682 | F: 917.522.3103

jmoldovan@morrisoncohen.com

[vCard](#) | [Bio](#) | [LinkedIn](#)

Morrison Cohen LLP

[909 Third Avenue](#)

[27th Floor](#)

[New York, NY 10022](#)

www.morrisoncohen.com

On Jan 13, 2022, at 9:21 PM, Nagi, Jason <Jason.Nagi@offitkurman.com> wrote:

CAUTION: External sender. Verify before continuing.

Joe- further to the \$11,918,974.12 payoff (the "Payment Amount") tendered by my client, 286 Rider Ave Development LLC, to BeAviv Lender LLC, please provide a detailed accounting of the application of the tendered Payment Amount, including any DIP advances, the amount of each advance and evidence of each advance, by next Wednesday, January 19, 2022.

Best,



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Attorneys At Law

Jason A. Nagi

Chair - Distressed Real Estate
Head of FinTech
D 212.380.4108
M 646.251.3259
Jason.Nagi@offitkurman.com

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[in](#) CONNECT ON LINKEDIN

590 Madison Ave
6th Floor
New York, NY 10022
T 212.545.1900
F 212.545.1656
offitkurman.com

[in](#) [f](#) [t](#) [i](#)

From: Nagi, Jason

Sent: Tuesday, January 11, 2022 12:46:41 PM

To: Moldovan, Joseph T. <jmoldovan@morrisoncohen.com>

Cc: Kuhns, Joyce <jkuhns@offitkurman.com>; Spelfogel, Douglas <DSpelfogel@mayerbrown.com>

Subject: 286 Rider Ave Payoff

Please see attached letter.



Offit Kurman®
Attorneys At Law

Jason A. Nagi
Chair - Distressed Real Estate
Head of FinTech
D 212.380.4108
M 646.251.3259
Jason.Nagi@offitkurman.com

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6th Floor
New York, NY 10022
T 212.545.1900
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offitkurman.com

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Exhibit B

Nagi, Jason

From: Nagi, Jason
Sent: Monday, January 17, 2022 6:16 PM
To: Moldovan, Joseph T.
Cc: Kuhns, Joyce; Spelfogel, Douglas
Subject: Stipulations to Withdraw State Civil Court Actions- 286 Rider Ave Acquisition LLC-In re 286 Rider Ave Acquisition LLC
Attachments: cidDD259ADF-169F-46A9-BE02-4B0F0B3A55D6.pdf; cidF6DE16F3-8B0E-464D-B617-6EB490C6767A.pdf; cidA7FB8D7F-6AB7-4C09-AB6F-7DE12A8D5FF3.pdf

Joe: I am following up on Judge Beckerman's Scheduling Order [Dkt. No. 259] in furtherance of her requirement that Development file its Supplement to its Pay Off Motion no later than January 26 by presenting to you for Ms. Thompson's signature three (3) Stipulations of Dismissal already executed by Development's counsel for Supreme Court of the State of New York County of New York Index Nos. 653088/2021, 452010/2021, and 654711/2021. As time is of the essence, we are asking that you return the executed Stipulations to us no later than Wednesday, January 19, 2022 at 12 PM.



Jason A. Nagi

Chair - Distressed Real Estate
Head of FinTech
D 212.380.4108
M 646.251.3259
Jason.Nagi@offitkurman.com

590 Madison Ave
6th Floor
New York, NY 10022
T 212.545.1900
F 212.545.1656
offitkurman.com



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SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

HERITAGE 875 4TH AVENUE LLC, HERITAGE 286
RIDER AVE LLC, 875 4TH AVENUE ACQUISITION LLC,
286 RIDER AVENUE ACQUISITION LLC, TOBY
MOSKOVITS and MICHAEL LICHTENSTEIN,

Plaintiffs,

- against -

AVIV ARAVA MANAGEMENT, LLC, BE-AVIV 4TH
AVENUE MORTGAGE LENDER, LLC, BE-AVIV 286
RIDER LLC, BE-AVIV 4TH AVENUE LENDER LLC, BEN
HARLEV and EYAL EPSTEIN,

Defendants.

Index No.: 452010/2021

**STIPULATION OF
DISMISSAL -
DISCONTINUANCE
WITHOUT PREJUDICE**

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, the attorneys of record for all the parties to the above entitled action, that whereas no party hereto is an infant or incompetent person for whom a committee has been appointed and no person not a party has an interest in the subject matter of the action, the above entitled action be, and the same hereby discontinued without prejudice, without interest, costs or disbursements to either party as against the other. A copy of this stipulation may be submitted to the Court to be so ordered and filed with the Clerk of the Court Kings County.

Morrison Cohen LLP

Goldberg Law Group PLLC

BY: _____

Latisha V. Thompson, Esq.
Counsel for Defendants
909 Third Avenue
New York, New York 10022
212 751 9800

Dated: January , 2022

By: Helen Setton

Helen Setton, Esq.
Counsel for Plaintiffs
14 Wall Street – Suite
2064 New York, New
York 10002 212 697 3250

Dated: January 14, 2022

SO ORDERED:

J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF KINGS

BE-AVIV 286 RIDER, LLC,

Plaintiff,

-against-

TOBY MOSKOVITS and YECHIAL MICHAEL
LICHTENSTEIN,

Defendants.

Index No.: 654711/2021

**STIPULATION OF
DISCONTINUANCE
WITHOUT PREJUDICE**

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, the attorneys of record for all the parties to the above entitled action, that whereas no party hereto is an infant or incompetent person for whom a committee has been appointed and no person not a party has an interest in the subject matter of the action, the above entitled action be, and the same hereby discontinued without prejudice, without interest, costs or disbursements to either party as against the other. A copy of this stipulation may be submitted to the Court to be so ordered and filed with the Clerk of the Court Kings County.

Morrison Cohen LLP

Goldberg Law Group PLLC

BY: _____

Latisha V. Thompson, Esq.
Counsel for Plaintiffs
909 Third Avenue
New York, New York 10022
212 751 9800

Dated: January , 2022

By: Helen Setton

Helen Setton, Esq.
Counsel for Defendants
14 Wall Street – Suite 2064
New York, New York 10002
212 697 3250

Dated: January 14, 2022

SO ORDERED:

J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

AVIV ARAVA MANAGEMENT, LLC, BE-AVIV
4TH AVENUE MORTGAGE LENDER, LLC, BE-
AVIV 286 RIDER LLC, BE-AVIV 4TH AVENUE
LENDER LLC, BEN HARLEV and EYAL
EPSTEIN,

Plaintiffs,

-against-

HERITAGE 875 4TH AVENUE LLC, HERITAGE
286 RIDER AVE LLC, 875 4TH AVENUE
ACQUISITION LLC, 286 RIDER AVENUE
ACQUISITION LLC, TOBY MOSKOVITS and
MICHAEL LICHTENSTEIN,

Defendants.

Index No.: 653088/2021

**STIPULATION OF
DISMISSAL -
DISCONTINUANCE
WITHOUT PREJUDICE**

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, the attorneys of record for all the parties to the above entitled action, that whereas no party hereto is an infant or incompetent person for whom a committee has been appointed and no person not a party has an interest in the subject matter of the action, the above entitled action be, and the same hereby discontinued without prejudice, without interest, costs or disbursements to either party as against the other. A copy of this stipulation may be submitted to the Court to be so ordered and filed with the Clerk of the Court Kings County.

Morrison Cohen LLP

Goldberg Law Group PLLC

BY: _____

Latisha V. Thompson, Esq.
Counsel for Plaintiffs
909 Third Avenue
New York, New York 10022
212 751 9800

Dated: January , 2022

By: Helen Setton

Helen Setton, Esq.
Counsel for Defendants
14 Wall Street – Suite 2064
New York, New York 10002
212 697 3250

Dated: January 14, 2022

SO ORDERED:

J.S.C.

Exhibit C

Nagi, Jason

From: Nagi, Jason
Sent: Friday, January 14, 2022 2:56 PM
To: Fred B. Ringel
Cc: Kuhns, Joyce; Spelfogel, Douglas
Subject: RE: Attorneys' Fees- 286 Rider

Fred- The lender has been paid in full, and all creditors are being dealt with.

As you have attested on the record, you were engaged by Ben Harlev and Be-Aviv who are no longer a part of this case. You need to provide a full accounting of your work until now and we need confirmation that as represented to us the money we were told was advanced in the DIP prior to January 11th was paid to you.

The only work you should be doing at this point is wrapping up on your bills to date.

We see no reason why you cannot get us the raw information about your past billing by next Wednesday. This is required in order for us to do an accounting of the correct payoff amounts and for us to receive the return of any excess payment we made.

Is there a particular reason you cannot provide us this basic information by next Wednesday? I would rather avoid having to raise this with the court.



Offit | Kurman®
Attorneys At Law

Jason A. Nagi
Chair - Distressed Real Estate
Head of FinTech
D 212.380.4108
M 646.251.3259
Jason.Nagi@offitkurman.com

590 Madison Ave
6th Floor
New York, NY 10022
T 212.545.1900
F 212.545.1656
offitkurman.com





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From: Fred B. Ringel <fbr@robinsonbrog.com>
Sent: Thursday, January 13, 2022 10:20 PM
To: Nagi, Jason <Jason.Nagi@offitkurman.com>
Cc: Kuhns, Joyce <jkuhns@offitkurman.com>; Spelfogel, Douglas <dspelfogel@mayerbrown.com>
Subject: RE: Attorneys' Fees- 286 Rider

Jason,

I did not see any provision in the scheduling order that contained a deadline of January 19th to provide an accounting as of today's date. Moreover, the pending appeals filed by Developments make it impossible to give a number since legal fees and expenses continue to accrue.

Please advise if your client intends to continue to pursue the pending appeals.

Fred

=====

Fred B. Ringel | Partner

Robinson Brog

875 Third Avenue | 9th Floor | New York, NY 10022

Office: 212.603.6301 | Cell 914.320.3455 | Fax 212.956.2164

(cellphone preferred during pandemic)

Email: fbr@robinsonbrog.com

RobinsonBrog.com | [LinkedIn](#) | [@RobinsonBrog](#)

WIRE FRAUD ALERT:

Never wire funds to our accounts without calling our office to confirm wire details personally. If, at any time, you should receive an email from this office or someone involved in the transaction, please first call to verify the information before initiating any wire transfers. All wire transfers are subject to verbal verification.

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From: Nagi, Jason <Jason.Nagi@offitkurman.com>

Sent: Thursday, January 13, 2022 9:25 PM

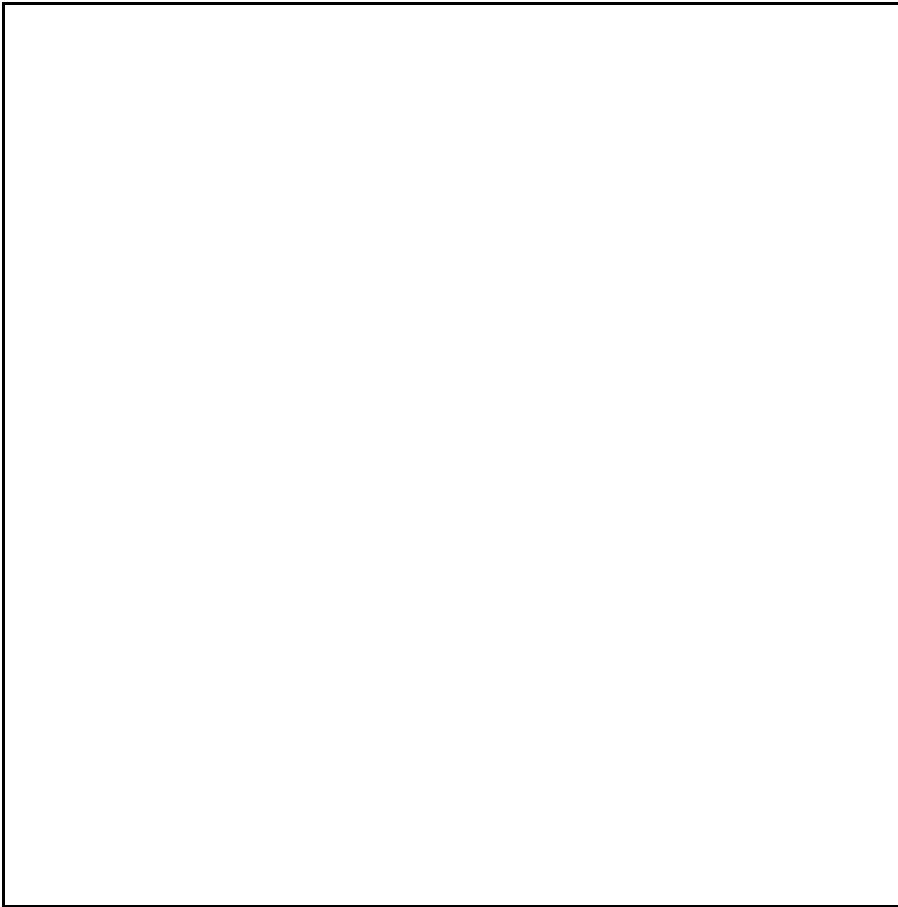
To: Fred B. Ringel <fbr@robinsonbrog.com>

Cc: Kuhns, Joyce <jkuhns@offitkurman.com>; Spelfogel, Douglas <dspelfogel@mayerbrown.com>

Subject: Attorneys' Fees- 286 Rider

Fred- further to the Court's order concerning the pending payoff motion [Dkt #259], please provide an accounting of all of Debtor's unpaid legal fees through today, by next Wednesday, January 19, 2022.

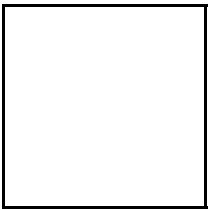
Best,



Jason A. Nagi

Chair - Distressed Real Estate
Head of FinTech
D 212.380.4108
M 646.251.3259
Jason.Nagi@offitkurman.com

590 Madison Ave
6th Floor
New York, NY 10022
T 212.545.1900
F 212.545.1656
offitkurman.com



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